



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 371

[Docket No. FMCSA-2022-0134]

Definitions of Broker and Bona Fide Agents

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notification of interim guidance; reopening of comment period.

SUMMARY: FMCSA is reopening the comment period for its interim guidance, Definitions of Broker and Bona Fide Agents. The interim guidance informs the public and regulated entities about FMCSA's interpretation of the definitions of *broker* and *bona fide agents* as it relates to all brokers of transportation by commercial motor vehicle. FMCSA is taking this action to better define the terms in response to a mandate in the Infrastructure Investment and Jobs Act (IIJA). After consideration of public comments received, FMCSA provided clarification on its interpretation of the definitions of *broker* and *bona fide agents*, in addition to meeting other criteria required by the IIJA. While the interim guidance was effective immediately upon publication, FMCSA sought comments to the interim guidance and will issue final guidance by June 16, 2023. FMCSA is reopening the comment period in anticipation of hosting a public listening session allowing comments on this topic. FMCSA will host the session at 10:00 a.m. on March 31, 2023, in Louisville, KY, and concurrently with the Mid America Trucking Show (MATS). Anyone wishing to attend can register at: <https://www.eventbrite.com/e/fmcsa-session-2-broker-regulatory-session-tickets-549535173497>. In addition, a transcript of the public listening session will be placed in the guidance docket.

DATES: The comment period for the interim guidance published on November 16, 2022, at 87 FR 68635, will be reopened on March 31, 2023. Comments must be received on or before April 6, 2023.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2022-0134 using any of the following methods:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov/docket/FMCSA-2022-0134/document>. Follow the online instructions for submitting comments.
- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- Fax: (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey L. Secrist, Chief, Registration, Licensing, and Insurance Division, Office of Registration, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001; (202) 385-2367; Jeff.Secrist@dot.gov. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number FMCSA-2022-0134 for this notice, indicate the specific section of the guidance to which your comment applies and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2022-0134/document>, click on this notification, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the interim guidance contain commercial or financial information that is customarily treated as private, that you actually treat as private, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the interim guidance. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2022-0134/document> and choose the document to review. To view comments, click this notification of interim guidance, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with its regulatory procedures and policies, DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notice>, the comments are searchable by the name of the submitter.

II. Background

The November 16, 2022, notification of interim guidance (87 FR 68635) requested comment on FMCSA's interpretation of the term *broker*, which is defined in 49 CFR 371.2(a) as a "person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport."

The interim guidance also requested comment on FMCSA's interpretation of the term *bona fide agent*, which is defined as "persons who are part of the normal organization of a motor carrier and perform duties under the carrier's directions pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on the part of the agent in allocating traffic between the carrier and others" (49 CFR 371.2(b)).

Section 23021 of the IIJA (P.L. 117-58, 135 Stat. 429) directed the Secretary (through FMCSA) to issue this guidance, taking into consideration the extent to which technology has changed the nature of freight brokerage, the role of bona fide agents, and other aspects of the freight transportation industry. Additionally, when issuing the

guidance, Congress directed that FMCSA must, at a minimum: (1) examine the role of a dispatch service in the transportation industry; (2) examine the extent to which dispatch services could be considered brokers or bona fide agents; and (3) clarify the level of financial penalties for unauthorized brokerage activities under 49 U.S.C. 14916, applicable to a dispatch service (87 FR 68635).

The comment period for the interim guidance closed on January 17, 2023. However, FMCSA will host a public listening session on issues related to brokers on March 31, 2023, concurrent with the 2023 MATS conference. Therefore, FMCSA believes it is in the interest of the public to reopen the comment period so FMCSA may consider comments on the guidance made at the session and for a short period thereafter. Accordingly, FMCSA is reopening the comment period on the date of the session, March 31, 2023, and will accept additional comments until April 6, 2023.

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,
Administrator.

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